



# PROPOSED RULE MAKING

**CR-102 (June 2004)**

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Ecology A.O. 03-10

- ☒ **Preproposal Statement of Inquiry was filed as WSR 04-04-101 ; or**  
☐ **Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**  
☐ **Proposal is exempt under RCW 34.05.310(4).**

- ☒ **Original Notice**  
☐ **Supplemental Notice to WSR \_\_\_\_\_**  
☐ **Continuance of WSR \_\_\_\_\_**

**Title of rule and other identifying information:** (Describe Subject) Dangerous Waste Regulations, chapter 173-303 WAC The Dangerous Waste Regulations set forth the requirements for determining if solid wastes are dangerous wastes, establish a system for tracking dangerous waste from initial generation to treatment or disposal, and establish requirements for facilities so that all dangerous wastes are managed safely and responsibly in Washington state.

**Hearing location(s):** Video conference hearings will be held simultaneously at the following locations: [See attached.](#)

Date: August 10, 2004 Time: 1 to 4 pm

**Date of intended adoption:** November 30, 2004  
 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Patricia Hervieux

Address: PO Box 47600 Olympia, WA 98504-7600

e-mail [pher461@ecy.wa.gov](mailto:pher461@ecy.wa.gov)

fax (360) 407-6715 by (date) September 10, 2004

**Assistance for persons with disabilities:** Contact

Marnie Black by August 2, 2004

TTY (800) 833-8973 or (360) 407-6759

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The proposed amendments will bring the state regulations current with federal requirements, and will update other requirements including implementing the Hazardous Waste Facilities Initiative on recycling and used oil facilities.

**Reasons supporting proposal:** [See attached.](#)

**Statutory authority for adoption:** chapters 70.105, 70.105D, and 15.54 RCW

**Statute being implemented:** chapter 70.105 RCW

**Is rule necessary because of a:**

Federal Law?

☒ Yes ☐ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

40 CFR Parts 260 through 279

**DATE**

**NAME** (type or print)

Polly Zehm

**SIGNATURE**

**TITLE**

Assistant Director

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE

STATE OF WASHINGTON

FILED

JUNE 7 2004

TIME 4:01 PM

WSR 04-14-094

(COMPLETE REVERSE SIDE)

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

N/A

**Name of proponent:** (person or organization) Department of Ecology

- ☐ Private  
☐ Public  
☒ Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Patricia Hervieux	Lacey, WA	(360-407-6756)
Implementation....Darin Rice	Lacey, WA	(360-407-6702)
Enforcement..... Darin Rice	Lacey, WA	(360-407-6702)

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Patricia Hervieux

Address: PO Box 47600 Olympia, WA 98504-7600

phone (360) 407-6756

fax (360) 407-6715

e-mail [pher461@ecy.wa.gov](mailto:pher461@ecy.wa.gov)

☐ No. Explain why no statement was prepared.

**Is a cost-benefit analysis required under RCW 34.05.328?**

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Patricia Hervieux

Address: PO Box 47600 Olympia, WA 98504-7600

phone (360) 407-6756

fax (360) 407-6715

e-mail [pher461@ecy.wa.gov](mailto:pher461@ecy.wa.gov)

☐ No: Please explain:

Attachment- Hearings

**University of Washington, Tacoma**

Administrative Building, room BHS107

1900 Commerce Street

Tacoma, WA 98402-3100

1<sup>st</sup> floor room, above the street-level businesses (Starbucks)

Link to site location information: <http://www.tacoma.washington.edu/media/video/>

**Spokane Community College**

1810 N. Greene Street

Spokane, WA 99207-5399

Room -- Instructional Media Lab

**University of Washington, Seattle**

Magnuson Health Sciences Center

Computing and Communications, UWTV, T-wing room 239

2<sup>nd</sup> floor, near the Health Sciences Center Library

N.E. Pacific Street near 15<sup>th</sup> Avenue

Seattle, Washington 98195-7150

Campus map: <http://www.washington.edu/home/maps/southcentral.html>

**Yakima Valley Community College**

16<sup>th</sup> Street & Nob Hill Boulevard

Yakima, Washington 98907

**Proposed amendments related to federal rules:**

Ecology is proposing to adopt several federal hazardous waste rules into the state Dangerous Waste Regulations. Many are proposed with language identical to the federal rule. Others are proposed with differences between the state and federal version. The rule titles and Federal Register references of the federal hazardous waste rules proposed for adoption are listed below. The text of the summary paragraphs that appeared in the Federal Register was included in Ecology's public draft that was available for review earlier this year. However, due to space constraints, only the titles and dates of the federal rules appear below. More detailed information appears on Ecology's website with the text of the proposed rule or may be obtained from the department.

Federal hazardous waste rules proposed for adoption essentially unchanged from the federal version include the following: **1)** Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations 61 FR 16290-16316; **2)** Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions 62 FR 32974-32980; **3)** Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production 62 FR 45568-45573; **4)** NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule 64 FR 52828-53077; 64 FR 63209-63213; **5)** Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters 64 FR 56469-56472; **6)** 180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry 65 FR 12378-12398; **7)** Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions 64 FR 36365-36367; **8)** Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections 66 FR 34374-34376; **9)** Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities 66 FR 58258-58300; 67 FR 17119-17120; **10)** NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule) 67 FR 6792-6818; **11)** Zinc Fertilizers Made From Recycled Hazardous Secondary Materials 67 FR 48393 – 48415; **12)** Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver- Containing Batteries 67 FR 62618 – 62624; and **13)** NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections 67 FR 77687 – 77692.

The following federal regulations that are proposed for adoption either contain differences from the federal version or have extra explanatory information. **14)** Hazardous Waste Combustors; Revised Standards; Final Rule-Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions 63 FR 33782 – 33829. **15)** NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections 65 FR 42292-42302; 66 FR 24270-24272; 66 FR 35087-35107. **16)** Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules 66 FR 27266-27297. **17)** Amendments to the Corrective Action Management Unit Rule 67 FR 2962-3029. **18)** NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule 67 FR 6968-6996. **19)** Universal Waste for Mercury-Containing Equipment proposed by EPA on June 12, 2002 Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes and Mercury-Containing Equipment 67 FR 40508-40528. **20)** Waste Minimization. HSWA Codification Rule, 50 FR 28702-28755, July 15, 1985 and Biennial Report Correction, 51 FR 28556, August 8, 1986. **21)** National Environmental Performance Track Program 69 FR 21737-21754, April 22, 2004.

## **Other proposed amendments not related to federal rules:**

Ecology is proposing other amendments not related to the federal rules listed above. Several editorial and technical corrections and clarifications are being made including citation corrections, form name changes, changing SIC codes to NAICS codes, updating references to solid waste rules by changing chapter citations from 173-304 to 173-350 WAC, correcting citations throughout the rule, changing references from the Uniform Fire Code to the International Fire Code, and other minor technical corrections. Several of the more significant changes are described below. More detailed explanations are available from Ecology.

Changes are also being made to update the publication *Chemical Testing Methods for Designating Dangerous Waste*. The draft changes are available for review in a separate document on Ecology's website with the other rule information. The only related changes in the rules themselves are revision dates changes where references to the test methods appear.

**WAC 173-303-045.** July 1, 2003 is the new date for incorporation by reference of any federal requirements since it is the version of the federal rules that includes all newer rules that Ecology is proposing for adoption with the exception of the Performance Track Rule.

**WAC 173-303-060.** "Notification Form 2" is being changed to "Dangerous Waste Site Identification Form" here and at WAC 173-303-210(2) and WAC 173-303-240(6)(a).

**WAC 173-303-070(8).** This addition clarifies application of the used oil management standards to small quantity generator used oil. This intent was made clear in the Federal Register Notice in 1992. This addition provides consistency between the federal and the state rules.

**WAC 173-303-110(3) Chemical Testing Methods Update.** Citations to Chemical Testing Methods are being updated to reflect revisions to State-only persistence criteria for halogenated organic compounds in Chapter 3, Section C of Ecology publication #97-407 'Chemical Testing Methods for Designating Dangerous Waste'.

**WAC 173-303-190(5)(b).** The marking requirement in the June 2000 rule was inadvertently noted as applying to packages containing one hundred ten gallons. This change will include the intermediate bulk containers of greater than 110 gallons but less than a thousand gallons and will also include cylinders within this range that are commonly used for antifreeze.

**WAC 173-303-200(2)(a)(ii).** WAC 173-303-200(2)(a) is being amended to clarify that contingency planning and general facility inspections are required for satellite accumulation.

**WAC 173-303-300(2)(a) & (b) and new definition in WAC 173-303-040 for "Knowledge".** Ecology is proposing to amend the regulations to clarify requirements for confirming and documenting information from a generator on a waste profile for a waste stream. Ecology believes the proposed amendment is consistent with general requirements in the existing rules to ensure sufficient information for waste designation (WAC 173-303-070) and proper management of the waste (WAC 173-303-300(2)).

**WAC 173-303-400(3)(c)(ix).** A change is being proposed to require owners or operators of interim status facilities to submit a closure plan for partial closure of a tank, container storage, or incinerator unit at least 45 days prior to the date they expect to begin closure of such a unit.

**WAC 173-303-505(1).** The proposed amendment provides Ecology the discretion to accept a waste-derived fertilizer registration renewal without requiring new TCLP and HOC test data. This discretion is limited to renewals of waste-derived fertilizers that have provided this information to Ecology at least twice before. The rule change requires the registrant to provide documentation that the source materials in the product have not changed.

**WAC 173-303-515(13).** This amendment to the used oil management standards adds a section that gives the agency the ability to require used oil generators to test their waste on a case-by-case basis to identify if the oil is on or off specification oil or to rebut the presumption that the oil is actually dangerous waste. This regulation will simplify testing requirements and be a benefit to used oil generators by allowing Ecology to request the less expensive analytical tests for on-specification determinations rather than the more expensive tests for designation.

**WAC 173-303-610(3)(c)(i).** This change requires owners or operators of final status facilities to notify Ecology of a partial closure of a tank, container storage, or incinerator unit at least 45 days prior to the date of which they expect to begin closure of such a unit.

**WAC 173-303-640(7)(d).** These changes bring this subsection into alignment with the other sections in Dangerous Waste Regulations that require reporting for spills.

**WAC 173-303-802(5) and WAC 173-303-040 Designated Facility.** This rule change will allow facilities that operate wastewater treatment units under Permit by Rule (PBR) to receive hazardous wastewaters that have been generated from off site. The scope of this rule change will be limited to the receipt of wastewaters from off site that are from a similar industry and have similar dangerous constituents to those in the wastewaters that are normally generated and treated by the host wastewater treatment unit. This change will not open up opportunities for businesses to operate under permit by rule and receive wastewater from unrelated off-site sources. The potential receiving facility must have a wastewater treatment unit that was designed to treat wastewaters that are generated on-site before it would be eligible to receive similar wastewaters from off-site generated by their associated businesses.

**WAC 173-303-910(1)(c) and -910(6)(f)(i) Petitions.** The current 45 day minimum public comment period in WAC 173-303-910(1)(c) is being shortened for consistency with related requirements in the Administrative Procedures Act.

**WAC 173-303-9904 W001 Listing.** The state waste code for PCB is being changed from W001 to WPCB to prevent confusion since EPA now uses “W001” as a form code for the Hazardous Waste Report Instructions and Forms.

**Hazardous Waste Facilities Initiative.** The proposed rules to implement this initiative will revise and strengthen current standards for the protection of human health and the environment for hazardous waste and used oil management facilities. They will also provide assurance that owners and operators of waste management facilities plan and pay for the eventual closure of their operations. This is done by extending requirements for developing plans for closing facilities, estimating the costs for closure, obtaining pollution liability coverage, and assuring that funds will be available to pay for closure for hazardous waste recycling facilities and used oil processors/re-refiners. Changes are also proposed to rules that apply to hazardous waste treatment, storage and disposal (TSD) facilities. These changes will reduce the range of financial options that facilities may select from, prohibit the use of subsidiary insurance companies (captive insurance), and require that financial institutions maintain a good rating by national rating agencies (Standard & Poor’s, Moody’s, A.M. Best).

Revisions are proposed to: WAC 173-303-040, -120, -515, -610, -620, and -960. These revisions will not apply to on-site recycling or on-site used oil processing, collection of used oil or household hazardous wastes by cities and counties, or collection of farm pesticides by Washington Department of Agriculture.

Origin of this proposal. Three facilities in Washington, including a recycler, a used oil processor, and a combination TSD/recycler/used oil processor failed and were abandoned during the period from 1999 through 2001. The department began assessing inadequacies and gaps in hazardous waste requirements that allow facility owners and operators to avoid accountability for the financial costs of removing and disposing of wastes; decontaminating equipment, tanks and buildings; and addressing threats to human health or the environment.

In 2002, Ecology published a report to the Legislature that outlined problems and inadequacies with the current system for regulating, permitting, maintaining public information, and funding Ecology’s oversight responsibilities for TSDs, recyclers and used oil processors (see <http://www.ecy.wa.gov/biblio/0204028.html> ). Representatives from the waste management industry, large and small businesses, public interest and environmental organizations, and government (local, state and federal) were consulted during the process of identifying these problems and proposing solutions.

The proposed rules are intended to specifically address some of the problems that were identified. These rules will assure that owners and operators of hazardous waste recycling or used oil processing/re-refining facilities cannot close, abandon, or otherwise avoid paying for waste removal, disposal and decontamination of equipment and structures. Under current rules these facilities may shut down and leave the costs of controlling environmental threats, removing wastes and conducting sites cleanup to property owners, former customers, or tax payers. For recycling facilities and used oil processors/re-refiners, these costs may often range from tens of thousands to several hundred thousand dollars. In some cases in Washington, the total cleanup costs have been several million dollars. Several examples are provided in the department’s report to the Legislature.

In the fall of 2003, two major options were presented to stakeholders for revising closure and financial responsibility requirements for TSD facilities, recyclers and used oil processors. Major features of these options included: *Option 1.* Revise selected requirements of financial mechanisms for TSDs. Extend traditional closure and financial responsibility requirements to recyclers and used oil processors/re-refiners. *Option 2.* Revise selected requirements of financial mechanisms for TSDs. Require recyclers and used oil processors/re-refiners to prepare and submit closure plans. Establish a maximum closure amount of \$50,000 for recyclers and used oil processors/re-refiners with a provision that the amount may be lower if justified by a detailed closure cost estimate; and delete the requirement for pollution liability coverage.

Based upon comments received during an informal comment period and during comments from the public on our published intent to adopt rule (CR101), Option 1, above, was chosen for proposal. The department considered the comments and determined that Option 1 provided the greatest level of confidence that the costs of closure would be accounted for and that the preparation of a site-specific cost estimate is scaled to the volume, types and risks associated with the wastes being managed. The primary disadvantages of selecting Option 1 are that it will result in higher direct costs for facility owners/operators for complying with closure and financial requirements, and to the department for administrative costs. Option 1 is also expected to indirectly result in higher costs to waste generators as facility owners/operators pass on their costs to customers.